

CIV-160908-CIV-DS1614922-PETENT-160002



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Petition Filed (Civil)



NEW FILE

SEP - 8 2016

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN BERNARDINO COUNTY

MICHAEL EWELL

v.

CALIFORNIA STATE PERSONNEL
BOARD, AND DOES 1 through 10,
Inclusive,

Case No. CIVDS1614922

VERIFIED PETITION FOR WRIT OF
MANDAMUS

[Code Civ. Pro. § 1094.5; Gov. Code,
§ 3309.5(e)]

MICHAEL EWELL (hereinafter "Ewell or Petitioner"), hereby petitions the Court for a Writ of Mandamus pursuant to Code of Civil Procedure §1094.5, directed to respondent California State Personnel Board as Follows:

1. Petitioner Michael Ewell ("Ewell") was a party to an action initiated by the California Department of Corrections and Rehabilitation, titled, *Michael Ewell v. California Department of Corrections and Rehabilitation*. Having been placed on leave without pay, and subsequently dismissed, Ewell has an interest in the action.

2. On April 18, 2016, Administrative Law Judge Amy Friedman, presiding, issued a proposed order dismissing Ewell. Judge Friedman held that the evidence had been established, by a preponderance, that Ewell was engaged in unprofessional, inappropriate behavior with an

1 inmate, De-Etta Kelly. This proposed order was adopted by the State Personnel Board on June 1,
2 2016.

3 3. This petition is timely as Ewell has not caused by unreasonable delay and this petition
4 was filed within 90 days of the administrative court's ruling.

5 4. This petition is being filed in the lowest court capable of granting relief, as the
6 previous action was venued in San Bernardino County.

7
8 **Statement of Facts**

9 5. Petitioner Ewell began his career as a Correctional Officer in 2008. Prior, Ewell was
10 honorably discharged from the military, and had worked in special security forces for political
11 figures, such as President Barack Obama.

12 6. Ewell initiated the investigation regarding inmate Kelly by drafting a memorandum
13 regarding suspicious calls made by Kelly. On June 1, 2015, Ewell was dismissed from his
14 position as a correctional officer. The California Department of Corrections and Rehabilitation
15 (hereafter "Respondent") alleged that Ewell had an inappropriate and sexual relationship with an
16 inmate housed at the California Institution for Women ("CIW").

17 7. Additionally, Respondent alleged that Ewell was dishonest during an internal
18 investigation when questioned about his conduct with Inmate De-Etta Kelly ("Kelly").

19 8. During the hearing, the court considered evidence and believed both Kelly and Ewell
20 as credible, despite Kelly having been convicted with a serious felony.

21 9. However, the evidence in which Respondent put forth was simply Kelly's testimony
22 and Kelly's journal entries that contained hearsay, without any physical evidence supporting
23 Kelly's allegations.

24 10. Kelly attempted to present photographic evidence depicting Ewell's alleged
25 misconduct, but this evidence was inadmissible because the photographs could not be
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1 authenticated or proved to show whether Ewell was the male figure featured in the photograph.
2 Respondent could not show that Ewell was involved with Kelly in the photograph, and thus, no
3 physical evidence supported Kelly's accusations against Ewell.

4 11. There was also a subpoena regarding Ewell's phone records, which showed that
5 Ewell had never texted or personally contacted Kelly's contraband cell phone.

6 12. Ewell, as noted by the Court, was extremely credible and did not hesitate in
7 answering or responding to any of the questions asked of him.

8 13. The court failed to consider Kelly's underlying and methodically planned motive to
9 gain capital income after being released from prison, by creatively writing statements in her daily
10 journal that was used to conclude that the preponderance standard had been met in this case.

11 **Basis for Relief**

12 14. The administrative court affirmed Ewell's dismissal on the ground that the evidence
13 presented was sufficient to terminate Ewell as a Correctional Officer at the California Institution
14 for Women. Such a finding is a direct contradiction of the applicable California law, and clear
15 public policy objectives to protect people working for the state from dismissal based on
16 unfounded allegations of misconduct. No substantial evidence supports the conclusions adopted
17 by the State Personnel board. The penalty of terminating Ewell is excessive under the
18 circumstances.

19 **Absence of Other Remedies**

20 15. The court's order terminating Ewell from his employment, without receiving pay
21 while under investigation, deprives Ewell of the opportunity to have his harm redressed by any
22 other manner. At issue in this case is the insufficient evidence presented in which Respondent
23 considered to dismiss Ewell from his employment. By terminating Ewell, the respondent court
24 held that the evidence was enough, and now Ewell is deprived from working for Respondent or
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1 receiving his back pay. Granting writ relief may prevent needless appellate litigation regarding
2 evidentiary issues presented by his hearing, making Ewell's appeal appropriate under these
3 circumstances. See Angie M., 37 Cal. 12, App. 4th at 1223; North American Chem. Co. v.
4 Super.Ct. (Trans Harbor, Inc.) 59 Cal. App. 4th 764, 773 (1997).

5
6 16. Ewell will suffer irreparable harm if he is forced to wait until appellate procedures are
7 exhausted, since he would not receive back pay in a timely manner to financially support himself
8 and his family.

9 17. Prior to the hearing on this matter, Ewell will lodge with the court a complete record
10 of the evidentiary hearing, all exhibits entered into evidence, all writing briefs and findings of
11 fact submitted by the parties in the underlying administrative appeal, as well as a Points and
12 Authorities in support of this petition for Writ of Mandamus.
13

14 **Prayer**

- 15 1. Grant the petition and issue a writ of mandamus redirecting the respondent court to vacate its
16 order dismissing Ewell from his employment and to enter a judgment overruling his dismissal
17 entirely, while also reinstating Petitioner's back pay.
18 2. An award of Petitioner's costs and attorney fees pursuant to California Rules of Court, Rule
19 8.493 and Government Code Section 800 and 3309.5(e).
20 3. Whatever further relief may be just and proper.
21

22
23 Respectfully submitted,

24 DATED:

25
26 By: 

27 **ZULU ALI**
Attorney for Petitioner
MICHAEL EWELL
28

VERIFICATION

I, Michael Ewell, declare as follows: I am the Petitioner Michael Ewell herein. I have read the foregoing Petition for Writ of Mandamus and of its contents. The facts alleged in the petition are within my own knowledge, and I know these facts to be true. I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on September 06, 2016, in Riverside, California.

DATED: September 06, 2016

By: 

MICHAEL EWELL